IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.950 to 952 of 1997

M/s.Industrial Stores Trading Co.,
143, Linghi Chetty Street,
Chennai.
Rep. by its
Power Agent Mr.R.Sekar. .. Appellant in all above Crl.As/ Complainant

vs.

1.M/s.Professional Circuit Boards Ltd.,
1-D, Rosewood Office,
28, Nungambakkam High Road,
Chennai. ..1st Respondent in all above Crl.As/ Accused

2.Shyam Goenka ..2nd Respondent in all above Crl.As/ Accused

Prayer: These criminal appeals have been filed against the judgments, dated 29.07.1997, in C.C.No.6223 to 6225 of 1995 on the file of the IV Metropolitan Magistrate, Saidapet.

For Appellant : Mr.S.Suresh(in all above Crl.As)

For Respondent : Mr.A.Amarnath(in all above Crl.As)
(Legal Aid counsel)

COMMON JUDGMENT

The complainant, who has lost his all the three cases in C.C.No.6223 to 6225 of 1995 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai, is the appellant herein in all the three appeals. The complaints were preferred under Section 200 of Cr.P.C for an offence punishable under Section 138 of Negotiable Instrument Act.

2. In C.C.No.6223/1995:- In the complaint in C.C.No.6223 of 1995, the complainant would state that the second accused is one of the directors of the first accused-company and the first

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accused-accused was having business transaction with the complainant-company and that in the said business transaction, the accused owes money to the complainant-company and in order to discharge the said debt, the accused had issued a cheque dated 10.05.1993, for a sum of Rs.50,000/- bearing cheque No.114402 and another cheque dated 28.05.1993 bearing No.114406 for Rs.30,772.35/- drawn in Bank of India in favour of the complainant. When the above said cheques were presented before the Lakshmi Vilas Bank, Thambu Chetty Street, Chennai, they were returned by the Bank with an endorsement that "it exceeds arrangement" on 09.11.1993. The complainant issued a notice dated 13.11.1993, to the accused informing the bouncing of the cheques by the Bank on presentation. Inspite of the receipt of the said notice, the accused have not chosen to send any reply nor return the amount. The complaint has been preferred by the power of attorney holder Thiru.Sekar. After taking the complaint on file, notice was issued to the accused and on the appearance of the accused copies were furnished to the accused under Section 207 of Cr.P.C and when questioned about the offence, the accused pleaded not guilty. P.Ws.1 to 3 were examined on the side of the complainant and Ex.P.1 to 9 were marked. When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied their complicity with the crime and they have further stated that they have already discharged the entire debt to the complainant. The defendants 1 & 2 were examined on the side of the accused and Ex.D.1 to 6 were marked.

3. In C.C.No.6224 of 1995:- According to the complainant in C.C.No.6224/1995, the accused issued a cheque bearing No.116117 dated 16.6.1993 for a sum of Rs.67,600/- and another cheque bearing No.116168 dated 26.6.1993 for Rs.67,600/- drawn in the name of Bank of India, Kathidral Branch, chennai, in favour of the complainant. When those two cheques were presented by the complainant in Lakshmi Vilas Bank, Thambu Chetti street, Chennai, they were returned with an endorsement "it exceeds arrangement" on 02.11.1993. The complainant issued notice dated 08.11.1993 to the accused demanding the accused to repay the amount informing the bouncing of the cheques. The said notice was received by the accused on 09.11.1993. But the accused has not chosen to send any reply nor made any arrangements for discharging the debt. The complaint was preferred by the complainant through his power of attorney agent Sekar. The complaint was taken on file by the learned Judicial Magistrate and on appearance of the accused on summons the learned Judicial Magistrate has furnished copies to the accused and when the accused was questioned he has denied the complicity with the crime. On the side of the complainant P.W.1 to 3 were examined and Ex.P.1 to 17 were market. When incriminating circumstances were put to the accused, the accused denied each and every circumstances, but he would say that he has

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discharged the entire debt due to the complainant. D.W.1 and 2 were examined on the side of the accused and Ex.D.1 to 6 were marked.

4.In C.C.No.6225/1995:- In the complaint the complainant would state that the accused owes amount to the complainant in the business transaction entered into between them and in view of the debt, the accused had issued three cheques bearing cheque No.114403 dated 13.5.1993 for Rs.20,000/-, Cheque No.114404 dated 19.5.1993 for Rs.50,000/- and Cheque No.114405 for Rs.43,000/- drawn in the Bank of India, Kathidral Branch, Chennai, in favour of the complainant. When the complainant produced those cheques before Lakshmi Vilas Bank, Thambu Chetti Street, Chennai, all the three cheques were returned with an endorsement "it exceeds arrangement" on 10.11.1993. Hence, the complainant issued notice to the accused dated 12.11.1993 demanding the repayment of the debt amount within fifteen days and also informing about the bouncing of the cheques on representation. In spite of the receipt of the notice on 13.11.1993, the accused has not chosen to send any reply nor returned the amount due to the complainant. The complaint was preferred by his power of attorney Sekar under Section 138 of Negotiable Instrument Act. The accused appeared before the Judicial Magistrate on summons and copies under Section 207 of Cr.P.C were furnished to the accused and when questioned the accused denied the charges. On the side of the complainant P.W.1 to 3 were examined and Ex.P.1 to 7 were marked. When incriminating circumstances were put to the accused under Section 313 of Cr.P.C the accused denied the complicity with the crime and he would say that he has discharged the entire debt. On the side of the accused D.W.1 & 2 and Ex.D.1 to 6 were marked.

5. After critically analising the evidence both oral and documentary the learned Magistrate has come to the conclusion that the guilt against the accused in all the above mentioned three cases were not proved by the complainant beyond any reasonable doubt and consequently acquitted the accused from the charges in all the three cases mentioned above under Section 255(1) of Cr.P.C. Aggrieved by the findings of the learned Magistrate, the complainant has preferred Crl.A.No.950/1997 against the judgment in C.C.No.6223/1995 and Crl.A.No.951/1997 against the judgment in C.C.No.6224/1995 and Crl.A.No.952/1997 against the judgment in C.C.No.6225/1995.

6. Now the point for determination in these three appeals is whether the findings of the learned Magistrate in C.C.No.6223 to 6225 of 1995, warrants any interference from this Court for the reasons stated in the memorandum of appeal?

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7.The point:-

7(a) Heard Mr.S.Suresh learned counsel for the appellant and Mr.A.Amarnath, (Legal Aid counsel), for the respondents and considered their rival submissions. The learned Magistrate has acquitted the accused on two grounds. First ground is that the complaint on behalf of the complainant-M/s.Industrial Stores Trading Co., was not properly presented before the Court through the power of attorney viz. Thiru.Sekar. The original power of attorney in favour of the said Sekar who has preferred the complaint on behalf of M/s.Industrial Stores Trading Co., was not filed before the trial Court. The learned Magistrate in his judgment has observed that the provision under Section 85 of the Indian Evidence Act was not followed in this case while presenting the complaint before the Court by the power of attorney holder viz. Sekar. The alleged power holder has not filed the original power of attorney, but he has only filed a xerox copy of the power deed that too was not attested by a notary public as required under Section 85 of the Indian Evidence Act.

7(b) The next ground on which the learned Magistrate has rejected the claim of the complainant is that during trial the entire debt amount due to the complainant in all the above said three cases were paid by the accused and received by the complainant and this fact was also admitted by P.W.1 during cross-examination before the Court. Even though it was contended by the complainant that the above said payment before the Court were paid by the accused towards a Civil transaction pending between the parties. But to substantiate this contention the complainant has not produced any document to show that there was a Civil dispute pending between the parties and amount paid by the accused were adjusted only to the amount due in Civil litigation pending between the parties. Under such circumstances, the learned trial Judge has come to a correct conclusion that the offence under Section 138 was not made out against the accused and consequently acquitted the accused under Section 255(1) of Cr.P.C.

7(c) The learned counsel appearing for the appellant relied on 1994(1) LW (Crl) 34 (Crl.O.P.No.8731/92 - M/s.Ruby Leather Exports rep. by its Proprietor, Basker; Crl.O.P.No.677/92 - R.Ramakrishnan Vs. B.Logaraj rep. by his Power of Attorney; Crl.O.P.No.5770/92 - Vasumathi Mills (Private) Ltd. Vs. M/s.Eastern Cotton Traders, by partner Narayani Devi Agarwal, rep. by Power Agent, kailash Prasad Agarwal; Crl.O.P.No.13963/91 - R.Balasubramanian and 4 others vs. A.V.Arumuga Perumal) and contended that even an employee of the company is competent to file a complaint on behalf of the Company. But a careful reading of the above said dictum will go to show that the complaint was preferred on behalf of the complainant by the power of agent in the capacity of holder in due course of the Negotiable Instrument.

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The facts in brief in the above cited Crl.O.Ps. which came up in appeals are as follows:-

"In Crl.O.P.No.8731/92:- Petitioners are A-1 and A-2 in C.C.No.9123/91 pending on the file of Fifth Metropolitan Magistrate, Egmore, Madras. They are alleged to have committed an offence punishable under Section138 of the Negotiable Instruments Act, on the basis of a private compliant initiated by respondent Venu. While seeking quashing of the pending prosecution Mr.T.K.Sampath, petitioners' counsel, contended that an authorised representative will not be competent to initiate a prosectuion under Section 142 of the Negotiable Instruments Act and on such complaint, the learned magistrate could not have taken cognizance.

The next contention was that in the event of a part payment being made by the drawer of the cheque, after issue of a statutory notice, a prosecution under Section 138 of the Act cannot be initiated. This ground, though not taken in the memorandum, was permitted to be raised. The allegations in the complaint show that the respondent was at the relevant time working as an Accountant in M/s.Vandhana Chemicals, Madras, who is the payee in the instant prosecution. This cause tile in the compliant shows K.Venu S/o.M.Ekambarm representing Vandhana Chemiclas, Madras, as the complainant. Though in paragraph 30 of the complaint it has been stated that K.Venu was doing all sorts of business transactions on behalf of the above said chemical company as such and he was very well acquainted with the facts and circumstances of the case and further the Managing Director of the above said Chemicals had Authorised him to file a criminal complaint against the petitioners before the competent court, no such authorization is available in the case records summoned from the trial court. The list of documents, stated to have been appended to the complaint, indicates in Sl.No.8, about the authorization letter issued by the Managing partner.

In Crl.O.P.No.677/92:- Petitioner Ramakrishnan is the sole accused in C.C.No.6436/91 pending on the file of the XV Metropolitan Magistrate, G.T.Madras. At the instance of B.Lograj, payee represented by his power of attorney C.Balasundaram, petitioner is being prosecuted for having allegedly committed an offence punishable under Section 138 of the Negotiable Instruments Act. A true copy of the General Power of attorney has been appended to the complaint. The contents of the complaint also clearly spell out, that the payee had authorised his Power of Attorney Agent C.Balasundaram, to file the impugned

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complaint.

The learned counsel appearing for the petitioner contented that Balasundaram was neither the payee nor the holder in due course and hence under Section 142 of the Act, the trial Magistrate could not have taken cognizance of the offence alleged. He then pointed out from the original records summoned from the trial Magistrate, that certain corrections in the vakalat and sworn statement, with reference to the date were apparent. In that background, he pointed out, the date of complaint written in ink, stating it as 21st of October, 1991, though the seal of the Magistrate bears the date 21st September, 1991. These differences in dates, according to the petitioner's counsel, are relevant for the purpose of calculating limitation.

In Crl.O.P.No.5770/92:- The petitioner Vasumathi Mills (Private) Ltd., Coimbatore, is the sole accused in S.T.R.No.1160/91 pending on the file of Judicial Magistrate No.II, Coimbatore. Prosecution against the petitioner has been initiated by Estern Cotton Traders, Calcutta through partner Narayani Devi Agarwal, represented by Power Agent Kailash Prasad Agarwal. The General Power of Attorney has been appended to the complaint. Even in the body of the complaint, the presentation of the complaint through the Power Agent, has been specifically mentioned.

The learned counsel on behalf of the petitioner, contended that there was no provision under the Negotiable Instruments Act, to facilitate filing of a complaint on behalf of a payee or holder in due course. He referred to Secion 11 of the Indian Penal Code which defines "person" as including any company or association, or body of person whether incorporated or not. As to how exactly service of summons, should be executed on corporate bodies and societies, he referred to Secion 63 of the Code of Criminal Procedure. Pointing out the provisions of Section 142(a) of the Negotiable Instruments Act, he submitted that a court can take congnizance only upon a complaint in writing made by the payee or as the case may be by the holder in due course of the cheque. The emphasis was on the words, 'in writing". A reference was there made to Section 2(d) of the Code of Criminal Procedure defining 'a complaint', which reads that a complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this code, that some person, whether known or unknown, has committed as offence, but does not include a police report.

Apart from that, the other point raised by the

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learned counsel for the petitioner was that more than three instances have been clubbed together in single prosecution which is contrary, to the mandate under Section 219 of the Code of Criminal Procedure. It was further contended by the learned counsel for the petitioner relying on the decision in M/s.Gopalakrishna Trading Co., rep. by its Manager P.Sivaram Vs. D.Baskaran [Crime XII-1992(3)], wherein it has been held by this Court that a complaint under Section 138 of Negotiable Instruments Act, can be filed by its Manager, Partner, Director or any person authorised by the company.

In Crl.O.P.No.13963/92:- Petitioners four in number, are A1 to A4 in C.C.No.293/90 pending on the file of Judicial Magistrate, Aruppukottai. Alleging that the petitioners had committed an offence punishable under Section 138 of the Negotiable Instruments Act, Respondent A.V.Arumuga Perumal, had instituted the private complaint, as the power of attorney holder of V.A.Vijayalakshmi, his wife, and payee, in the cheques concernd which are the subject matter of this prosectuion. The General Power of Attorney executed by V.A.Vijayalakshmi in favour of the respondent stands appended to the complaint. The learned counsel appearing for the petitioner while contending that a power of attorney was not competent to initiate a complaint under Section 138 of the Act, to be validly taken cognizance of by the trial Magistrate referred to Section 9 of the same Act, wherein "holder in due course" has been defined to mean any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payble to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. He also pointed out the meaning of "payee" under Section 7 of the Act, referring to the person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid. Section 8 of the Act defines "holder" as any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction. Petitioners' counsel referred to the opening words of Section 142 of the Act and contended that the provisions of the code of Criminal Procedure, stood excluded and therefore, it was all the more

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relevant, that under Section 142(a) of the Act, a complaint can be made only by the payee or as the case may be by the holder in due course of the cheque, and none else.

It has been held in the above said dictum that as a holder in due course the power of attorney is entitled to file a complaint. But that is not the case on the hand. In the case on hand, the complaint was preferred not by the holder in due course. Thiru.Sekar has preferred the complaint on behalf of the complainant-company as a power of attorney holder of the company. But as rightly pointed out by the trial Judge, the original power of attorney was not filed by the said Sekar, the alleged power attorney holder on behalf of the company.

7(d) Further xerox copy of the power of attorney produced by the said Sekar is not in conformity with the provisions of Section 85 of the Indian Evidence Act, since it was not certified by a notory public. Only under such circumstances, the learned trial judge has come to a correct conclusion that Thiru.Sekar is not competent to file the complaint in the capacity of power of agent holder for the company. Further it is in evidence that the entire debt has been discharged before trial, which has been admitted by P.W.1 in his cross-examination. Even though a vague attempt was made by P.W.1 that the amount paid by the accused were in respect of the amount due under Civil litigation, there was not evidence produced to substantiate this contention. Under such circumstances, I am of the view that there is no reason to interfere with the well considered judgments passed by the trial Court in C.C.No.6223 to 6225 of 1995 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai. Point is answered accordingly.

8. In the result, the Criminal Appeal Nos.950 to 952 of 1997 are dismissed confirming the judgment in C.C.No.6223 to 6225 of 1995 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai. The respondents/accused have been defended by legal aid counsel Mr.A.Amarnath. The leagal aid counsel's fee is fixed as Rs.2,500/- in each appeal. The High Court Legal Services Authority is directed to pay Rs.2,500/- in each appeal to the learned Legal Aid counsel.

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To,

1. THE IV METROPOLITAN MAGISTRATE, SAIDAPET, CHENNAI.

2. DO THRO THE CHIEF METROPOLITAN, EGMORE, CHENNAI

3. THE SECRETARY THE HIGH COURT LEGAL SERVICES AUTHOIRITY
HIGH COURT MADRAS.

4. MR. A. AMARNATH, ADVOCATE (FREE COPY)
HIGH COURT MADRAS.

Crl.A.Nos.950 to 952 of 1997

MJ(CO)
SR/12.1.2007

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